

103D CONGRESS  
1ST SESSION

# H. R. 1032

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1993

Mr. MONTGOMERY (for himself, Mr. STUMP, Mr. EDWARDS of California, Mr. SMITH of New Jersey, Mr. APPELGATE, Mr. BILIRAKIS, Mr. EVANS, Mr. QUINN, Mr. PENNY, Mr. ROWLAND, Mr. SLATTERY, Mr. KENNEDY, Mr. SANGMEISTER, Ms. LONG, Mr. EDWARDS of Texas, Mr. CLEMENT, Mr. FILNER, Mr. GUTIERREZ, Mr. BAESLER, Mr. BISHOP, Mr. CLYBURN, Mr. KREIDLER, Ms. BROWN of Florida, Mr. HEFNER, Mr. RICHARDSON, Mr. STENHOLM, Mr. PAYNE of Virginia, Mr. PARKER, and Mr. OLVER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Department of Veter-  
5   ans Affairs Employment Discrimination Act”.

1 **SEC. 2. DEPARTMENT OF VETERANS AFFAIRS EMPLOY-**  
 2 **MENT DISCRIMINATION RESOLUTION PROCE-**  
 3 **DURES.**

4 (a) IN GENERAL.—Title 38, United States Code, is  
 5 amended by inserting after chapter 7 the following new  
 6 chapter:

7 **“CHAPTER 8—EMPLOYMENT**  
 8 **DISCRIMINATION**

“Sec.

“801. Scope of chapter.

“802. Office of Employment Discrimination Complaints Resolution.

“803. Informal complaint resolution.

“804. Investigation of complaints.

“805. Final agency decision; hearings.

“806. Review of final agency decisions.

“807. Unlawful employment discrimination defined.

9 **“§ 801. Scope of chapter**

10 “(a) The procedures established in this chapter shall  
 11 be implemented in a manner consistent with procedures  
 12 applicable under regulations prescribed by the Equal Em-  
 13 ployment Opportunity Commission.

14 “(b) Nothing in this chapter supersedes any right or  
 15 obligation of an employee to elect (in lieu of procedures  
 16 under this chapter) to raise an allegation of unlawful em-  
 17 ployment discrimination under the appeal procedures of  
 18 the Merit Systems Protection Board or under grievance  
 19 procedures established under a collective bargaining agree-  
 20 ment.

1 **“§ 802. Office of Employment Discrimination Com-**  
2 **plaints Resolution**

3 “(a)(1) There is in the Department an Office of Em-  
4 ployment Discrimination Complaints Resolution (herein-  
5 after in this chapter referred to as the ‘Office’), which  
6 shall be headed by a Director. The Director shall report  
7 only to the Secretary and Deputy Secretary.

8 “(2) Subject to the direction of the Secretary, the Di-  
9 rector shall have sole responsibility within the Department  
10 for administering the procedures under this chapter for  
11 resolving complaints of unlawful employment discrimina-  
12 tion arising within the Department.

13 “(3) In addition to the functions of the Director  
14 under paragraph (2), the Director shall perform such  
15 other functions as the Secretary may prescribe consistent  
16 with the functions of the Director under paragraph (2).

17 “(b) The Secretary shall employ within the Office ad-  
18 ministrative law judges appointed in accordance with sec-  
19 tion 3105 of title 5 for the purposes of this chapter and  
20 such other personnel as the Office may require.

21 “(c) The Secretary shall ensure that the Director is  
22 furnished sufficient resources to enable the Director to  
23 carry out the functions of the Office under this chapter  
24 in a timely manner.

1       “(d) The Secretary shall include in the documents  
2 submitted to Congress by the Secretary in support of the  
3 President’s budget for each fiscal year—

4               “(1) detailed information on the budget for the  
5 Office;

6               “(2) the Secretary’s opinion as to whether the  
7 resources (including the number of employees) pro-  
8 posed in the budget for that fiscal year are adequate  
9 to enable the Secretary to comply with statutory and  
10 regulatory deadlines for the administration of the  
11 procedures under this chapter and other provisions  
12 of law relating to the resolution of complaints of un-  
13 lawful employment discrimination involving the De-  
14 partment; and

15               “(3) a report on the activities of the Office dur-  
16 ing the preceding fiscal year, including (A) a state-  
17 ment of the number and nature of complaints of un-  
18 lawful employment discrimination received and the  
19 number and nature of complaints resolved, and the  
20 results of any appellate review, during the year, (B)  
21 a description of the timeliness of the resolution of  
22 complaints during the year, and (C) a statement of  
23 significant decisions and trends affecting the work of  
24 the Office.

25       “(e)(1) The Director shall prescribe—

1           “(A) standards of timeliness for the expeditious  
2       resolution of complaints of unlawful employment dis-  
3       crimination under this chapter;

4           “(B) the qualifications and training require-  
5       ments for employees of the Office; and

6           “(C) requirements for record-keeping pertaining  
7       to counseling and investigations by employees of the  
8       Office.

9       “(2) Regulations under paragraph (1) shall be con-  
10   sistent with regulations prescribed by the Equal Employ-  
11   ment Opportunity Commission, except that, in the interest  
12   of the expeditious resolution of complaints, the Director  
13   may prescribe shorter time periods with respect to any  
14   deadline or administrative period that is applicable only  
15   to the time within which the Government may (or is re-  
16   quired to) act.

17   **“§ 803. Informal complaint resolution**

18       “Employees of the Office shall counsel employees of  
19   the Department, and applicants for employment with the  
20   Department, who allege that they have been subject to un-  
21   lawful employment discrimination by an officer or em-  
22   ployee of the Department. The Office shall seek to resolve  
23   such complaints in an expeditious and impartial manner  
24   through informal investigation and conciliation using pro-  
25   cedures prescribed by the Director.

1   **“§ 804. Investigation of complaints**

2           “(a) If a complaint of unlawful employment discrimi-  
3 nation is filed with the Department and the complaint is  
4 not resolved through the informal resolution process under  
5 section 803 of this title, the Director shall assign the com-  
6 plaint to an administrative law judge, who shall determine  
7 whether the complaint shall be accepted for investigation.

8           “(b)(1) The administrative law judge assigned to a  
9 complaint shall make such determination in accordance  
10 with regulations of the Equal Employment Opportunity  
11 Commission, except that if the administrative law judge  
12 determines that the complaint is without merit, the admin-  
13 istrative law judge may determine that the complaint is  
14 not to be accepted for investigation.

15           “(2) A decision that a complaint is not to be accepted  
16 for investigation is a final agency decision of the matter.

17           “(c)(1) If the administrative law judge determines  
18 that the complaint is to be accepted, the Director shall  
19 promptly provide for an investigation of the complaint,  
20 which shall be carried out by employees of the Office (or  
21 by contract personnel acquired by the Director). The em-  
22 ployee (or contractor) conducting the investigation shall  
23 submit to the Director a complete written report of the  
24 results of the investigation.

25           “(2) If a portion of a complaint is accepted for inves-  
26 tigation and a portion is not accepted, the individual filing

1 the complaint or the Department may request the admin-  
2 istrative law judge to direct the suspension of the inves-  
3 tigation of the portion of the complaint accepted for inves-  
4 tigation pending the results of any review of the decision  
5 not to accept the other portion.

6 “(3) The Director shall furnish a copy of the inves-  
7 tigative report to the administrative law judge, the individ-  
8 ual who filed the complaint, and the individual whose ac-  
9 tions, or failure to act, gave rise to the complaint of unlaw-  
10 ful employment discrimination. The administrative law  
11 judge may direct that an additional investigation be made  
12 if the administrative law judge determines that an addi-  
13 tional investigation is warranted.

14 “(d) The Director shall prescribe standards for the  
15 conduct of investigations under this section.

16 **“§ 805. Final agency decision; hearings**

17 “(a) The final agency decision on a complaint of un-  
18 lawful unemployment discrimination, in a case not re-  
19 solved through informal procedures under section 803 of  
20 this title, shall be made by an administrative law judge.

21 “(b) The individual filing the complaint may request  
22 a hearing on the matter. Any such request shall be made  
23 in such time and manner as may be prescribed by the Di-  
24 rector. The administrative law judge shall grant a request  
25 for a hearing unless, after giving appropriate notice, the

1 administrative law judge determines that there is no genu-  
2 ine dispute as to a material fact.

3 “(c) In acting upon a complaint, an administrative  
4 law judge—

5 “(1) may conduct a hearing on the matter;

6 “(2) may refer the matter for a hearing by a  
7 hearing examiner; or

8 “(3) may decide the matter without a hearing.

9 “(d) If a hearing is held, the hearing shall be subject  
10 to section 556 of title 5.

11 **“§ 806. Review of final agency decisions**

12 “(a) If the final agency decision in a case complaining  
13 of unlawful employment discrimination by an officer or  
14 employee of the Department is adverse to the individual  
15 filing the complaint, the individual may appeal the deci-  
16 sion to the Equal Employment Opportunity Commission  
17 or to the appropriate United States district court, as pro-  
18 vided by law.

19 “(b) If the final agency decision in such a case is  
20 adverse to the Department, the Secretary may appeal the  
21 decision to the Equal Employment Opportunity Commis-  
22 sion. Any such appeal shall be made within 30 days after  
23 the date of the decision. The Equal Employment Oppor-  
24 tunity Commission may act on such an appeal in the same

1 manner as in the case of an appeal by an individual  
 2 against a final agency decision.

3 **“§ 807. Unlawful employment discrimination defined**

4 “For purposes of this chapter, the term ‘unlawful em-  
 5 ployment discrimination’ means any action, or failure to  
 6 act, that is a violation of any of the following:

7 “(1) Title VII of the Civil Rights Act of 1964  
 8 (42 U.S.C. 2000e et seq.).

9 “(2) The Age Discrimination in Employment  
 10 Act of 1967 (29 U.S.C. 621 et seq.).

11 “(3) Section 6 of the Fair Labor Standards Act  
 12 of 1938 (29 U.S.C. 206).

13 “(4) Section 501 of the Rehabilitation Act of  
 14 1973 (29 U.S.C. 791).”.

15 (b) CLERICAL AMENDMENT.—The tables of chapters  
 16 at the beginning of title 38, United States Code, and at  
 17 the beginning of part I of such title, are amended by in-  
 18 serting after the item relating to chapter 7 the following  
 19 new item:

**“8. Employment Discrimination ..... 801”.**

20 **SEC. 3. TRANSITION.**

21 Chapter 8 of title 38, United States Code, as added  
 22 by section 2, shall apply with respect to complaints of un-  
 23 lawful employment discrimination that are filed after the  
 24 end of the six-month period beginning on the date of the  
 25 enactment of this Act. Any complaint filed before the end

1 of such period shall be resolved in accordance with the  
2 procedures in effect on the date of the enactment of this  
3 Act.

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